

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

\* \* \*

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
V.	)	
	)	CASE NO. 15-CR-42
	)	
WAYNE A.G. JAMES	)	
	)	
Defendant.	)	

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**NOTICE OF FILING RESPONSE TO COURT'S**  
**ORAL ORDER OF FEBRUARY 7, 2017**

NOW COMES, defendant WAYNE A.G. JAMES, by and through his counsel, the Office of the Federal Public Defender and submits this response to the Court's oral order permitting the undersigned until 3:30 pm of February 7, 2017, to submit additional evidence in support of our Motion to Dismiss or in the alternative, for suppression [Doc 87].

A copy of the bill drafting request for Fireburn-related legislation made by then Senator Wayne James is attached as **Ex. 1 (Bill Drafting Request and Pre-emption Letter)**. The document was emailed to our office from the Legislature's Assistant Archivist.

The document establishes that on April 22, 2009 - the same day as one of the funding requests for Fireburn - related documents relied on by the government at this morning's hearing - Mr. James submitted proposed legislation related to

the Fireburn. It establishes that both Mr. James, or a legislative aide to Mr. James, was to be contacted to discuss the request if necessary. This document, along with the additional evidence submitted as attachments to our original motion (and admitted into the record) establish that Mr. James' procurement of documents (including discussions with document-holders, negotiations related to delivery of the documents, and similar fact-finding efforts) are immune from inquiry under the Speech or Debate clause.

Further, the attached memo from the Deputy Legal Counsel (also received the afternoon of February 7) "pre-empting" Mr. James' bill in favor a request submitted by another Senator (believed to be V.I. Senate Bill 28-0159) further explains why Mr. James' research and document-production are protected acts. Id. at 3. This bill was assigned to Mr. James' committee, and was discussed and debated in committee and on the floor of the senate. Since his own Fireburn bill was pre-empted (i.e., removed from consideration) by Senator Nelson's, Mr. James' investigation and document collection were directly related to both Mr. Nelson's Fireburn bill and Mr. James' centennial celebration legislation, both attached to the Motion to Dismiss and signed into law in 2010. Thus, his legislative fact-finding efforts in furtherance of both of these bills and potential amendments, including

conversations, memoranda, letters, and emails related to securing, paying for, and translating material relevant to that legislation is protected under "speech or debate" immunity. See Gov't of Virgin Islands v. Lee, 775 F.2d 514, 521 (3d Cir. 1985).

Also attached (under Seal) is the complete Grand Jury testimony of a legislative aide to Mr. James. See **Ex. 2 (UNDER SEAL)**. We draw the Court's attention to the section beginning on page 19, wherein that aid is asked by the government about the Fireburn project. In the course of answering, the aid explains - again, at the request of the government - that the Fireburn documents are needed to "draft legislation" related to Fireburn. Tr. at 22. The aide goes on to connect this legislative purpose to the specific allegations in this case by explaining precisely how the documents were requested (Id. at 22-23), and how much they cost. Id. at 22-25.

WHEREFORE, these additional documents, added to the exhibits already submitted to the Court as attachments to the Motion to Dismiss establish that the government's case necessarily rests on "speech or debate" as interpreted by relevant authorities and thus must be dismissed.

Dated: February 8, 2017

Respectfully submitted,

OMODARE B. JUPITER  
FEDERAL PUBLIC DEFENDER

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**CERTIFICATE OF SERVICE**

I, HEREBY CERTIFY that on the 8th day of February, 2017 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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